IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 31444 of 2005(R)

PETITIONER:

G.VISWANADHANKUTTY, AGED 65,
S/O.GOPALA PILLAI, RESIDING AT HOUSE NO.315 A,
4 CENT COLONY, 10, ALUVA, ERNAKULAM DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS:

1. **OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, REPRESENTED BY ITS SECRETARY, BARTON HILL BUNGLOW, KUNNUKUZHI, VANCHIYOOR P.O., TRIVANDRUM.**

2. **KEEZHMAD GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, KEEZHMAD, ERNAKULAM.**

3. **SRI.THOPPIL ABU, FORMER PRESIDENT, KEEZHMAD GRAMA PANCHAYATH, KEEZHMAD, ERNAKULAM.**

4. **LAISA SEBASTIAN, FORMER PRESIDENT, KEEZHMAD GRAMA PANCHAYATH, KEEZHMAD, ERNAKULAM.**

* 5. **MEMBER, WARD NO.IX, (OLD WARD NO.X), KEEZHMAD GRAMA PANCHAYATH, KEEZHMAD, ERNAKULAM. - D E L E T E D.**

***NAME OF THE 5TH RESPONDENT DELETED FROM THE PARTY ARRAY AS PER ORDER DTD. 28/06/06 IN I.A.8708/06 AT THE RISK OF THE PETITIONER.**

BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANZAR
SRI.SREESHAKUMAR,SC,KEEZHMAD PANCHYAT

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.31444/2005 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER DTD. 22/12/04 PASSED BY THE HON'BLE OMBUDSMAN FOR LOCAL SELF GOVERNMENT.

EXT.P2: COPY OF THE ORDER DTD. 20/07/05 N C.M.P.NO.42/05 IN O.P.NO.102/02 PASSED BY THE HON'BLE OMBUDSMAN.

EXT.P3: COPY OF THE LETTER DTD. 14/10/05 ISSUED BY THE HON'BLE OMBUDSMAN.

EXT.P4: COPY OF THE WP(C) NO.31444/2005 JUDGMENT DTD. 27/07/2006.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): PATTAYAM.

EXT.R2(B): CRITERIA OF SELECTION.

EXT.R2(C): COMPLAINT IN O.P.102/02.

EXT.R2(D): SALE DEED 4091/04.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 31444 OF 2005

Dated this the 9th day of October, 2007

JUDGMENT

The petitioner is a senior citizen and he complains that inhuman and unjust treatment has been meted out to him by the 2nd respondent Panchayat as a result of which his long cherished desire of constructing a small house to live in has been frustrated. He has filed this Writ Petition seeking to quash Ext.P2 order passed by the Ombudsman for Local Self Government Institutions and to implement Ext.P1, an order earlier passed by the Ombudsman himself. His case was that after enquiring into a complaint which he had submitted to the Ombudsman, the Ombudsman passed Ext.P1 order dt.22.12.04 and directed the Panchayat to give him requisite land for putting up a house and also to release the requisite fund for construction. On noticing that the Panchayat is not implementing Ext.P1 order, the petitioner approached the Ombudsman again by filing CMP No.42 of 2005 which was in the nature of an execution petition. The Ombudsman passed Ext.P2 order declining him relief holding that the Panchayat is justified in not implementing Ext.P1 order. The reason stated in Ext.P2 is that the Panchayat has subsequently found out that the Panchayat had given 4

cents of land to the petitioner in a previous occasion and the petitioner has sold off the land on 23.08.04. According to the Ombudsman, a person who has misused the assistance given by the Panchayat on a previous occasion is not entitled for any further assistance from the Panchayat. Thus, in the execution petition filed by the petitioner the Ombudsman set aside the order, execution of which was sought for by the petitioner.

2. On the basis that no counter affidavit has been filed, I allowed the writ petition by judgment dt.27.07.06 and by setting aside Ext.P2 directed the 2nd respondent Panchayat to give the petitioner 4 cents of land and also a sum of Rs.28,000/- so as to enable the petitioner to construct a house.

3. The Panchayat filed RP No.783 of 2006 after filing a counter affidavit in the Writ Petition and I allowed the RP on condition that the Panchayat shall deposit a sum of Rs.28,000/- as short term deposit with the High Court extension branch, State Bank of India and produce the receipt before this Court. The above condition was complied with and accordingly the Writ Petition was posted for hearing.

4. I have heard the submissions of Sri.E.S.Ashraf, Advocate representing Sri.P.C.Sasidharan for the writ petitioner and Sri.Sreesha

Kumar, Standing Counsel for the Panchayat. While Sri.E.S.Ashraf would justify the judgment which I had passed on 27.7.06 on the various reasons stated by me in that judgment, Sri.Sreesha Kumar would submit that Ext.P1 order was passed by the Ombudsman under the belief that the property was mortgaged to the Bank and that the Bank had auctioned the same. But, by the time Ext.P2 order was passed. It has become clear to the Ombudsman that the property in question had never been mortgaged by the petitioner to any bank and that the property was never been the subject matter of any auction sale and also that Ext.P1 order had been fraudulently obtained by the petitioner by suppressing material facts and by misleading the Ombudsman. Referring to Rules 23 and 28 of the Rules governing the powers of the Ombudsman, Mr.Sreesha Kumar submitted that the Ombudsman is empowered to rectify any error or omission in its order and that the Ombudsman has got powers of review also. Counsel drew my attention to Ext.R2(a) which will show that 1.62 Ares of land in Alwaye village had been allowed to the writ petitioner by the Panchayat free of cost and submitted that, that property was sold out by him. Thereafter, the writ petitioner filed another application for construction of a house under the People's Planning Scheme in 2001-02 as per Ext.R2(b) criteria. The

total index mark obtained by the petitioner was very low. Petitioner was not selected since there were many eligible candidates who had secured more index marks than the petitioner. It is raising various allegations before the Ombudsman that the petitioner submitted Ext.R2 (c) complaint. Before the complaint came up for consideration the petitioner had sold the property under Ext.R2(d) sale deed. Suppressing the sale conducted by him, he mis-represented to the Ombudsman that the property covered by Ext.R2(a) was sold by a Bank in public auction. It was on that representation only that Ombudsman passed Ext.P1 order. Since that representation is conceded to be wrong, the petitioner is not entitled to fall back on Ext.P1. Sri.Sreesha Kumar submitted that the petitioner does not merit any sympathy from this Court. There are millions of poor and down trodden people in this country and in the Panchayat also there are hundreds of such people. The petitioner was very lucky to get the privilege of getting 1.62 Ares of very valuable land which is sold away by him on his own.

Having regard to the rival submissions addressed at the Bar, I am in agreement with the learned counsel for the Panchayat that Ext.P2 order of the Ombudsman under challenge in the Writ Petition cannot be stated to be so wholly unreasonable as to justify exercise of judicial

review by this Court. After all, Ext.P1 order had been passed by the Ombdusman earlier on a fundamentally wrong premise that the property covered by Ext.R2(a) was sold by the mortgagee bank for recovery of the amounts advanced to the petitioner for construction of building. I suggested to the counsel during the course of hearing that parties should explore the possibility of sorting out the issue considering the undisputed position that the petitioner is in highly impecunious circumstances. Though the possibilities were explored, a compromise could not be brought out. The value of land in the Panchayat has skyrocketed like anything and more importantly the Panchayat does not have even an inch of land available with it to be assigned to the petitioner. Since Ext.P2 is sustainable, the petitioner can aspire for relief only in equity, i.e., on equitable and compassionate grounds. On those grounds and considering the circumstance that expectations were aroused in the petitioner's mind by Ext.P1 order and which was never formerly challenged by the Panchayat, I am of the view that he has to be paid at least the amounts necessary for putting up a small dwelling house. Under these circumstance, even as I decline the reliefs sought for in the Writ Petition, I direct that the amounts under deposit pursuant to the judgment in the RP together with interest will be

released to the petitioner. The amount will be released to the petitioner in full and final satisfaction of his claims against the Panchayat.

PIUS C. KURIAKOSE, JUDGE

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